



May 12, 2005

This afternoon, Senator Robert C. Byrd attacked the principle of a fair, up-or-down vote for all judicial nominations. He also continued to expound his newly-discovered view that the Senate should not set its procedures and practices by majority vote, i.e., to exercise the constitutional option.

Times have changed.

As Majority Leader in 1979, Senator Byrd expressly threatened to use the constitutional option in order to leverage successfully a time agreement on a rules change resolution: “Let the Senate vote on amendments, and then vote up or down on the resolution. ... if I have to be forced into a corner to try for a majority vote, I will [change the rules through majority-supported precedents] because I am going to do my duty as I see my duty, whether I win or lose.” (Sen. Robert Byrd, *Congressional Record*, 1979, pp. S144-45) In response to Senator Byrd's threats, the Senate modified the rules to his liking. Without his threats of exercising the constitutional option, the rules would not have been changed.

Senator Byrd led the creation of precedents in 1977, 1979, 1980 and 1987 to stop filibusters and other delaying tactics previously allowed under Senate rules or precedents. “Mr. Byrd led the charge to change the rules in 1977, 1979, 1980 and 1987, and, in some cases, to do precisely what Republicans are now proposing.” (Editorial, “Sen. Byrd On Filibuster-Busting,” *The Washington Times*, 3/7/05)

For a full explanation of Senator Byrd's pioneering efforts to use the constitutional option to limit minority rights, see the Senate Republican Policy Committee's 13-page policy paper at <http://rpc.senate.gov/files/Apr2505ConstOptSD.pdf>.